IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.2196 of 2006
Date of Decision:- 8.1.2007

State of Haryana ....Petitioner(s)

through
Mr.R.D.Sharma, DAG, Haryana.

vs.

Raghubir @ Bhira & ors. ....Respondent(s)

through
Mr.Pritam Saini, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This order shall dispose of Crl. Revision Nos.2214 and 2196 of 2006 as both have arisen out of the order dated 15.9.2006 passed by the Additional Chief Judicial Magistrate, Sonepat. For the sake of brevity, the facts are being taken from Crl.Rev.No.2196 of 2006.

Vide the impugned order, the Superintendent of Police, Crime Branch, Madhuban has been directed to get the matter re-investigated by an officer not below the rank of Deputy Superintendent of Police under his control and supervision.

An F.I.R.No.52 dated 7.3.2006 under Sections 341/367/120-B/148/149 IPC was registered at Police Station, Sadar, Panipat on a complaint made by Bhoop Singh-respondent No.13. It appears that the complainant was dissatisfied with the manner in which investigation of the

case was conducted, report under Section 173 Cr.P.C. was presented and/or petitioners No.1 and 2 in the accompanying criminal revision were kept in coloum No.2. The complainant accordingly approached this Court by way of Crl.Misc.No.46778-M of 2006 in which a direction to re-investigate the above-stated F.I.R. through an officer not below the rank of Superintendent of Police under the supervision of the Inspector General of Police (Crime Branch), Haryana, was sought. The aforesaid petition was disposed of by this Court vide order dated August 10, 2006 with liberty to the petitioner to move an application before the learned Magistrate for the relief claimed in the petition. It was directed that if any such application is moved , the same shall be dealt with and decided in accordance with law within two weeks from the date of its filing.

Respondent No.13-the complainant, moved an application before the learned Magistrate and pursuant thereto the impugned order has been passed whereby the Superintendent of Police, Crime Branch, Madhuban has been directed to get the matter re-investigated by an officer not below the rank of D.S.P.

Aggrieved, the State of Haryana as well as the two petitioners in the accompanying revision petition who were kept in column No.2 in report under Section 173 Cr.P.C. have approached this Court.

The only issue which arises for consideration is whether or not the learned Magistrate rightly directed reinvestigation of the case and that too by an Agency other than the Investigating Officer of the case.

There is no dispute between learned counsel for the parties that the impugned order has been passed by the learned Magistrate in purported exercise of powers under sub section (8) of Section 173 Cr.P.C. On a plain

reading of the aforesaid provision, it is apparent that "further investigation in respect of an offence regarding which a report under Section 173 (2) Cr.P.C. has already been forwarded, can be carried out by the Officer Incharge of the Police Station concerned." The learned Magistrate, thus, could not have handed over the investigation of the case to a different investigating agency and that too for "re-investigation" of the case. Consequently, the impugned order to the extent it directed the Superintendent of Police, Crime Branch to get the matter 're-investigated' by an officer not below the rank of D.S.P. is set aside/modified and it is directed that in compliance to the order passed by the learned Magistrate, 'further investigation' shall be carried out by the Investigating Officer of the Police Station concerned i.e. Police Station, Sadar Sonepat.

However, learned counsel for the complainant contends that there are more than one serious lacunas in the report submitted by the Investigating Officer under Section 173 Cr.P.C. He has seriously questioned the objectivity and impartiality of the Investigating Officer.

Though it is not expedient to express any views in relation to the above noted contention at this stage, however, the apprehensions expressed by the complainant cannot be taken lightly and/or brushed aside. The Investigating agency is obligated in law to carry out investigation in such a dispassionate, fair and above board manner that it inspires the public confidence. Prima facie, it appears that the police officers, who had earlier investigated the case (including the SHO, Police Station, Sadar Sonepat) have failed to perform their duties upto the expected parameters. Further investigation in the case at their hands, therefore, may not yield desirable results of a fair and impartial investigation. However, a workable solution

lies in the directions which I propose to issue to the authorities concerned.

Consequently, while disposing of this petition, (i) State of Haryana through Principal Secretary, Department of Home and (ii) Director General of Police, Haryana are directed to transfer the Dy.S.P. and S.H.O., Police Station Sadar Sonepat, who had earlier carried out the investigation and/or submitted the report under Section 173 Cr.P.C. forthwith and post other police officers of proven integrity and caliber in their place, who shall thereafter carry out further investigation in terms of Section 173 (8) Cr.P.C. as per the directions issued by the learned Judicial Magistrate.

Disposed of.

January 08, 2007 **(SURYA KANT)**
poonam **JUDGE**